

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.3388 of 2015 and
M.P.No.1 of 2015

- 1.Krishnakumar (died),
S/o.Late Balarama Reddiar,
3/249, Manapakkam Village,
Chennai 600 116.
- 2.Mrs.Sujatha,
D/o.late Balarama Reddiar,
3/222, Balarama Garden Salai,
Parthasarathy Nagar,
Manapakkam,
Chennai 600 116.
- 3.Mrs.Pushpa,
W/o.late Janakiraman,
D/o.late Balarama Reddiar,
3/239, Balarama Garden Salai,
Parthasarathy Nagar,
Manapakkam,
Chennai 600 116.
- 4.Tmt.Lalitha,
W/o.Selvarangam,
D/o.late Balarama Reddiar,
Old No.9, New No.19,
Vembuliamman Koil Street,
Alandur, Chennai 600 016.
- 5.Tmt.P.Thilagavathi,
W/o.Pattabiraman,
D/o.late Balarama Reddiar,
3/240, Balarama Garden Salai,
Parthasarathy Nagar,
Manapakkam, Chennai 600 116,

- 6.Tmt.C.Kamala,
W/o.Chinnaraj,
D/o.late Balarama Reddiar,
3/172, Balarama Garden Salai,
Parthasarathy Nagar,
Manapakkam,
Chennai 600 116.
- 7.Tmt.Saraswathi,
W/o.late Thukkaram,
D/o.late Balarama Reddiar,
3/225, Balarama Garden Salai,
Parthasarathy Nagar,
Manapakkam,
Chennai 600 116.
- 8.Tmt.Gunasundari (died),
W/o.Kumar,
D/o.late Balarama Reddiar,
3/175, Govindan Street,
Parthasarathy Nagar,
Chennai 600 116.
- 9.A.R.Kumar,
S/o.Ramu Reddy.
- 10.Rajesh Kanna,
S/o.A.R.Kumar.
- 11.Mahesh,
S/o.A.R.Kumar.
- All are residing in No.3/175, Govindan Street,
Astalakshmi Avenue, Parthasarathy Avenue,
Manapakkam, Chennai 600 125.
- 12.K.Geetha,
W/o.late B.Krishnakumar,
No.3/249, Krishna Enclave,
Manapakkam, Chennai 600125.
- 13.B.K.Jeevitha,
W/o.A.S.Senthil Kumar,
D/o.late Krishnakumar,
No.3/249, Krishna Enclave,
Manapakkam, Chennai 600 125.

Petitioners 9 to 11 brought on record as LRs of the deceased 8th petitioner viz., Gunasundari vide Court order dated 23.01.2020 made in C.M.P.Nos.5371 of 2018 and 286 of 2020.

Petitioners 12 and 13 brought on record as Lrs of the deceased 1st petitioner viz., Krishnakumar, made in C.M.P.Nos.5371 of 2018 and 286 of 2020.

. . . Petitioners

Vs

Tmt.Ananthanayagi @ Rani,
Rep by her power of attorney agent,
Chandrasekar,
Balarama Garden Salai,
Manapakkam,
Chennai 600 116.

. . . Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the above C.R.P and struck off the plaint in O.S.No.118 of 2015, on the file of the learned Additional District Judge, Chengalpattu.

For Petitioners	: Mr.V.Chandrankanthan
For Respondent	: Mr.R.Singaravelan, Senior counsel for Ms.Srividya

ORDER

This Civil Revision Petition has been filed to strike off the plaint suit in O.S.No.118 of 2015, on the file of the learned Additional District Judge, Chengalpattu.

2. The learned counsel appearing for the petitioners would submit that the plaint in O.S.No.118 of 2015, on the file of the Additional District judge, Chengalpattu, has to be struck off on the ground that while taking the plaint on file, the learned Trial Judge failed to look into the document No.4, filed along with the plaint. In the certified copy of the order in C.S.No.681 of 2006 dated 07.11.2014, on the file of this Court, the Court has dismissed the suit as withdrawn, without giving liberty to file a fresh suit on the same cause of action and the application filed by the respondent in A.No.5673 of 2014 in C.S.No.681 of 2006, was also dismissed on 07.11.2014. Whereas,

the respondent has stated in paragraph No.6 of the plaint in O.S.No.118 of 2015, that the respondent filed an application before this Court to withdraw the suit in O.S.No.681 of 2006 and subsequently, she filed an application in A.No.5673 of 2014, to withdraw the above said suit with liberty to file a fresh suit on the same cause of action and the said application was allowed, whereas, the document No.4 shows otherwise. Therefore, the respondent has suppressed the order passed by this Court in A.No.5673 of 2014 in C.S.No.681 of 2006 dated 07.11.2014, on the file of this Court.

3. The learned counsel appearing for the petitioners would further submit that in the pleadings in paragraph No.5 of the plaint, the respondent has stated that the partition deed dated 19.04.1993 is illegal, not binding and invalid. But, the respondent is aware of the document partition deed dated 19.04.1993, since she is also a party to that document and she got the property under the said document and she cannot be allowed to plead after 20 years that the suit partition deed is invalid and the said pleading is barred by limitation. The document has got to be challenged within three years from the date of the document.

4. Further, the learned counsel appearing for the petitioners would submit that under Order 23 Rule 1 of C.P.C., the suit filed by the respondent in O.S.No.118 of 2015, is an abuse of process of Court and the respondent cannot file a fresh suit without liberty on the same cause of action and admittedly, this Court refused to grant permission to file a fresh suit on the same cause of action and therefore, the suit filed by the respondent in O.S.No.118 of 2015, is liable to be rejected. He also taken further ground that under Order 2 Rule 2 of C.P.C., the respondent is not entitled to file a fresh suit, since the respondent filed a suit in C.S.No.681 of 2006 and continued the litigation for more than 8 years and subsequently, the said suit was dismissed without any liberty to file a fresh suit on the same cause of action. Now, she cannot be allowed to re-litigate the same issues before the learned Additional District Judge, Chengalpattu by filing the suit in O.S.No.118 of 2015. While taking the suit on file, the learned Trial Judge failed to consider the pleadings and also the documents annexed with it that there was an earlier suit filed by the respondent in C.S.No.681 of 2006, before this Court and though got an order of dismissal as withdrawn without liberty to file a fresh suit, but, falsely stated that they got the order of dismissal as withdrawn with liberty to file a fresh suit. Therefore, on the ground of suppression of material fact and abuse of process of

Court, the second suit filed by the respondent, is hit by Order 2 Rule 2 and therefore, the plaint in O.S.No.118 of 2015, on the file of the Additional District Judge, Chengalpattu, has to be rejected. The learned counsel placed the reliance on the judgment reported in 1987 (1) SCC 5, 1998 (3) CTC 165 and 2012 (1) CTC 238.

5. The learned senior counsel appearing for the respondent would submit that the first petitioner is a brother and the respondent is a sister. The respondent filed a suit for partition before this Court in C.S.No.681 of 2006 and since the previous counsel who appeared for the respondent/plaintiff had not given schedule of property correctly, she wanted to withdraw the suit with liberty to file a fresh suit. Therefore, she filed an application in A.No.5673 of 2014 in C.S.No.681 of 2006, under Order 23 Rule 1 of C.P.C. Though the application filed to withdraw the suit in C.S.No.681 of 2006, with liberty to file a fresh suit on the same cause of action, however, during pendency of the application, the earlier counsel who appeared for the respondent in the above said suit, made an endorsement to withdraw the said application and also withdrawn the suit in C.S.No.681 of 2006, without liberty to file a fresh suit on the same cause of action. The respondent was not aware of these facts and therefore, she was under bonafide impression that the liberty was given to the respondent to file the present suit.

6. Further, the learned senior counsel appearing for the respondent would submit that for rejection of plaint, the petitioners cannot straight away invoke Article 227 of the Constitution of India. There is an enabling provisions under Order 7 Rule 11, is very much available. If the petitioners file an application before the Trial Court, the respondent would be given opportunity to explain who committed mistake in mentioning the schedule of properties in the first suit and under what circumstances, the application was filed to withdraw the suit and under what circumstances, the second suit was filed. The learned counsel done the mistake and the same was not intimated to the parties and parties could not suffer on the mistake committed by the advocate.

7. Further, the learned senior counsel appearing for the respondent would submit that after all the suit is for partition between the brother and the sister and they can very well agitate their respective claim and the same can be decided in the suit. even if the second suit is filed, the petitioners can

very well substantiate that the respondent has no share in the suit properties and no prejudice would be caused to the petitioners. However, even without filing petition under Order 7 Rule 11, before the Trial Court, how the petitioners can straight away file the revision petition, invoking Article 227 of the Constitution of India, the same is not maintainable.

8. Heard both sides and perused the materials. Admittedly, the respondent filed a suit against the petitioners in O.S.No.118 of 2015, on the file of the Additional District Judge, Chengalpattu and the petitioners have filed the present revision petition to strike off the above said plaint on the ground that earlier the respondent filed a suit in C.S.No.681 of 2006, on the file of this Court and after filing written statement by the petitioners herein in that suit, the respondent filed an application in A.No.5673 of 2014 in C.S.No.681 of 2006, before this Court, to permit to withdraw the above said suit with liberty to file a fresh suit on the same cause of action. After filing the counter, admittedly, the above said application was dismissed as withdrawn and the suit in C.S.No.681 of 2006 also was dismissed as withdrawn without liberty to file a fresh suit on the same cause of action. In the additional typedset of papers filed by the petitioners herein shows that subsequently, the respondent filed an application in A.No.792 of 2017 in C.S.No.681 of 2006, before this Court, to amend the judgment and decree passed by this Court in C.S.No.681 of 2006 and amend the word dismissed as withdrawn as dismissed as withdrawn with liberty to file a fresh suit. The said application was subsequently dismissed by this Court on 09.10.2017. Therefore, as on date, no liberty was given to the respondent by this Court to file a fresh suit.

9. Therefore, the learned counsel for the petitioners would contend that the suit in O.S.No.118 of 2015, is hit by Order 2 Rule 2. While filing the suit, the respondent suppressed the fact that this Court has dismissed the previous suit as withdrawn without giving liberty to file the fresh suit on the same cause of action and the respondent falsely stated in the plaint in paragraph No.6 that the application filed in A.No.5673 of 2014, was allowed and liberty was given. Therefore, the plaint has to be rejected on the ground of abuse of process of Court by suppressing the material facts.

10. A careful perusal of records, admittedly, the respondent filed a suit in C.S.No.681 of 2006 before this Court. The said suit was dismissed as withdrawn and no liberty was given and subsequently, the respondent filed an application in A.No.792 of 2017, to amend the decree and judgment and the same was also dismissed. Therefore, as on date, no liberty was given. However, the learned senior counsel appearing for the respondent would submit that in the earlier suit, by mistake the schedule property was not correctly mentioned by the previous counsel on record. After filing the written statement only, the respondent came to know that the schedule of property was wrongly mentioned in the suit. Therefore, at the advice of the learned counsel, the respondent filed an application in A.No.5673 of 2014 in C.S.No.681 of 2006, to withdraw the above said suit with liberty to file a fresh suit on the same cause of action. But the order dated 07.11.2014, shows that based on the endorsement made by the learned counsel for the applicant in the said application, the application was dismissed as withdrawn and the suit in C.S.No.681 of 2006, was also simply dismissed as withdrawn, without liberty to file a fresh suit on the same cause of action. However, the learned senior counsel for the respondent submitted that in view of the endorsement made by the erstwhile counsel, the said application was dismissed as withdrawn on 07.11.2014, without giving liberty to file a fresh suit on the same cause of action. So, according to the learned senior counsel, this fact was not brought to the knowledge of the respondent and the same was done behind the back of the respondent and she was not aware of the above fact. Therefore, now, she wants to take action against the learned counsel who was appearing before this Court in C.S.No.681 of 2006.

11. Further, the learned senior counsel for the respondent would contend that due to the mistake committed by the learned counsel, the parties should not be affected and further, if the petitioners invoke Order 7 Rule 11, before the Trial Court, the respondent would be in a position to explain all these things by way of counter and let in evidence without giving any opportunity for alternative remedy, the petitioners straight away filing this revision petition by invoking Article 227, is not maintainable.

12. Though it is a settled proposition of law that the Hon'ble Apex Court and this Court has held that if the abuse of process of Court and against the public policy, the Court can invoke Article 227 and strike off the plaint, if so warranted. If otherwise, without exhausting the alternative remedy by invoking Order 7 Rule 11, the party cannot straight away file a petition by invoking Article 227 of the Constitution of India.

However, in this Case, the earlier suit for partition filed by the respondent sister against the petitioner brother, was dismissed as not pressed and of course, no liberty was given. But the second suit filed by the respondent for partition of the property which is not covered in the earlier suit, though she has stated that in the earlier suit, by mistake, the property was wrongly mentioned by the learned counsel. Therefore, now she has filed fresh suit. Since the prayer sought for in the application in A.No.5673 of 2014, is that, she may be permitted to withdraw the suit in C.S.No.681 of 2006, with liberty to file a fresh suit on the same cause of action. But, subsequently, based on the endorsement made by the erstwhile learned counsel, the application was dismissed as withdrawn and the suit was also dismissed as withdrawn without liberty to file a fresh suit. Therefore, whether as per the instruction given by the party, the learned counsel made an endorsement or without getting instruction, he made an endorsement, all these things have to be decided after letting evidence.

13. Though the respondent stated in paragraph 6 of the plaint in O.S.No.118 of 2015 that the respondent filed an application in A.No.5673 of 2014, to withdraw the suit in C.S.No.681 of 2006, with liberty to file a fresh suit on the same cause of action and the said application was dismissed, a reading of the plaint, the earlier plaint was filed by the respondent directly. Now, the present suit is filed by the respondent through power agent. The plaint was signed only by the power agent. It is not clear that as to whether the respondent has seen the plaint and also the document in Serial No.4 annexed with the plaint i.e., the certified copy of the order dated 07.11.2014 in C.S.No.681 of 2006, on the file of this Court. As far as the suit is hit by Order 2 Rule 2 is concerned, as already stated that the respondent filed a suit before this Court in C.S.No.681 of 2006 and during pendency, she filed an application to withdraw the said suit with liberty to file a fresh suit. But, admittedly, the said suit was dismissed, but, liberty was not granted. But, it is not known that as to whether the said fact was aware of the respondent or not. These are all to be decided only before the Trial Court. If the petitioners approach the Trial Court by filing an application under Order 7 Rule 11, it would be given an opportunity to the respondent to file counter and for letting necessary evidence and therefore, without giving an opportunity, approaching this Court without any materials, is not proper.

14. Therefore, under these circumstances, this Court is of the view that no doubt if circumstances warrants, the party can approach this Court by invoking Article 227 of the Constitution

of India, for striking off the plaint. But, at the same time, in all circumstances, this Court cannot invoke Article 227 and striking off the plaint by invoking Article 227. It is discretionary power of the Court and Article 227 has to be exercised sparingly and not each and every case. But considering the facts and circumstances of the case and the submissions made by the learned senior counsel for the respondent and especially, on reading of the prayer made in Application in A.No.5673 of 2014 in C.S.No.681 of 2006, she sought the relief of permission to withdraw the suit with liberty to file a fresh suit. Subsequently, the said application was dismissed based on only the endorsement made by erstwhile counsel and considering the circumstances, this Court feels that the revision petition filed by the petitioners is liable to be dismissed. However, the petitioners are at liberty to approach the Trial Court by invoking Order 7 Rule 11, incase they file an application before the Trial Court, the respondent herein, shall be given an opportunity to file counter and the Trial Court is directed to dispose of the application in accordance with law.

15. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Additional District Judge,
Chengalpattu.

Copy to
The Section Officer, V.R. Section,
High Court,
Madras.

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